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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 MAXIMILLIAN KLEIN, *et al.*,

12 Plaintiffs,

13 v.

14 META PLATFORMS, INC.,

15 Defendant.  
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Consolidated Case No. 3:20-cv-08570-JD

**[PROPOSED] ORDER GRANTING  
CONSUMER PLAINTIFFS' MOTION  
TO EXCLUDE FURTHER PORTIONS  
OF THE EXPERT REPORT AND  
TESTIMONY OF  
DR. CATHERINE TUCKER**

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18 This document relates to: *All Actions*  
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Now before the Court is Consumer Plaintiffs' Motion to Exclude Testimony of Dr. Catherine Tucker (the "Motion"). The Court, having considered the Motion and its accompanying memorandum, hereby finds that the Motion is **GRANTED**.

Expert testimony must be both relevant and reliable to be admitted. Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). A relevant expert opinion has a "valid connection to the pertinent inquiry." *Mullins v. Premier Nutrition Corp.*, 178 F. Supp. 3d 867, 888 (N.D. Cal. 2016) (quoting *United States v. Sandoval-Mendoza*, 472 F.3d 645, 654 (9th Cir.2006)). An expert opinion is reliable if it has "a reliable basis in the knowledge and experience of his discipline." *Daubert*, 509 U.S. at 592. Courts consider a number of non-exclusive factors when determining if an expert opinion is reliable, such as, "(1) whether a theory or technique can be (and has been) tested, (2) whether the theory or technique has been subjected to peer review and publication, (3) the known or potential error rate of the particular scientific theory or technique, and (4) the degree to which the scientific technique or theory is accepted in a relevant scientific community." *Mullins*, 178 F. Supp. 3d at 888 (quoting *Daubert*, 509 U.S. at 593–94). The expert opinion's proponent bears the burden of establishing its admissibility. *Cabrera v. Google LLC*, No. 5:11-cv-01263-EJD, 2022 WL 4468266, at \*2 (N.D. Cal. Sept. 26, 2022).

Consumer Plaintiffs challenge three opinions of Dr. Catherine Tucker, one of Facebook's expert economists: (1) class actions promulgate fraud; (2) the but-for world is implausible because mushrooming fraudulent accounts would cause Facebook's unraveling; and, (3) if Facebook paid users to access and use their data, Facebook would only pay users who generated high advertising revenue for Facebook.

As to the first challenged opinion, Dr. Tucker admitted she is not an expert in class action claims administration. She is not a qualified expert in this field, and her opinions on this topic must be excluded. *Mullins*, 178 F. Supp. 3d at 900-01 (quoting Fed. R. Evid. 702).

1 With respect to the second challenged opinion, no objective, verifiable evidence supports Dr.  
2 Tucker's opinion that fraudulent Facebook accounts are available in bulk for this price on the dark  
3 web, much less that the bulk purchase of these accounts would cause Facebook's unraveling in the  
4 but-for world. Given this lack of both independent testing and verifiable evidence, this opinion must  
5 also be excluded. *Domingo ex rel. Domingo v. T.K.*, 289 F.3d 600, 605-06 (9th Cir. 2002).

6 Finally, the third opinion is not based on a scientifically reliable methodology must be  
7 excluded. *Daubert*, 509 U.S. at 592.

8 The following material is hereby excluded from the record under *Daubert v. Merrell Dow*  
9 *Pharmaceuticals, Inc.* and related precedents: Paragraphs ¶¶ 48-50; 70-80, including Exhibits 3 and  
10 4, of Dr. Tucker's Opening Merits Report; Paragraphs ¶¶ 3, 27-28, 32, 34, 36, 37, 41; of Dr.  
11 Tucker's Rebuttal Merits Report; footnote citations in support of these paragraphs; and her  
12 deposition testimony on the excluded topics.

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15 **IT IS SO ORDERED.**

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17 Dated: \_\_\_\_\_, 2024

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HONORABLE JAMES DONATO  
UNITED STATES DISTRICT JUDGE